

EQUALITY IMPACT ASSESSMENT

Title of Policy	The Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 - covering application of early release of prisoners under Coronavirus (Scotland) Act 2020
Summary of aims and desired outcomes of Policy	<p>This Regulation sets out the eligibility conditions for early release of a limited number of short-sentence prisoners, as allowed for in the 2020 Act.</p> <p>This action is required to protect the security and good order of prisons; and the health, safety and welfare of prisoners and those working in prisons.</p> <p>A reduction in the prison population will increase the available operational capacity within the prison system. This will in turn increase the flexibility prisons have to support prisoners including with any healthcare needs and it will create scope to ease restrictions on the prison regime slightly, easing pressure on those living and working in prisons</p>
Directorate: Division: team	Justice Directorate: Community Justice Division - Prison Release Team

Executive summary

The Regulation sets out the eligibility conditions for consideration for early release under the terms of the Coronavirus (Scotland) Act. A number of statutory exclusions are contained in that Act. The Regulation provides sets out the class of prisoner to be released, defined by sentence length time left in custody. The Regulation also sets out a number of further exclusions from consideration in relation to domestic abuse or Covid-19 related offending.

The criteria have been selected to allow the identification of a sufficient number of individuals to be released (between 300-450) which will produce the intended positive impact on the prison population, whilst remaining proportionate under the current circumstances.

The eligibility criteria do not use as a basis for selection any protected characteristics, so the profile of those selected should correspond to the overall profile of the short-sentence prisoner population.

However this EQIA seeks to provide analysis of the policy impact to help demonstrate that there is no unintended or disproportionate impact on those with those protected characteristics.

It is also recognised that this starting group are of a particular profile (for example the prison population is majority male).

In terms of impact on the general public, there was consideration of the potential impact as a result of any potential reoffending (which can often disproportionately impact on more vulnerable members of society) and that was mitigated by the exclusion of individuals whose offending history would suggest a heightened risk to the public (ie those whose offending resulted in a longer sentence; a post-release supervision order; or were sentenced for a domestic abuse offence or were subject to a non-harassment order).

Background

Given the nature of emergency release and the current pandemic this EQIA has been completed as extensively as the available time allows.

The Regulations establish that only those prisoners who are eligible on the date on which the regulations come into force will be considered for early release. This will limit the maximum number of individuals who may be directly affected (which is proportionate to the need to reduce the overall prison population).

The Regulations also establish a specific time period for release to take place (the 28 days following the making of the Regulation, although Parliamentary approval would allow for the Regulation to be in force for up to 180 days).

The key aspects of the eligibility criteria are as follows:

- Prisoners will only be considered if they are (a) sentenced to 18 months or less – and (b) on 4 May 2020, within 3 months of their scheduled release date at the halfway stage of their sentence;
- The Coronavirus Act rules out release for life sentence prisoners, those sentenced for sex offences or terrorism offences, or with supervision orders (the full list of statutory exclusions is in the Act itself).
- The proposed regulations will further exclude prisoners serving or who have served a sentence for domestic abuse offences or aggravations. The Regulations will also exclude those serving a prison sentence for certain Covid-related offences and those subject to a non-harassment order.
- The Coronavirus Act also enables Prison Governors to veto the release of any prisoner where such release would present an immediate risk to an identified individual. SPS will issue specific guidance to staff to ensure consistent and robust handling of this process.
- The associated Regulations - The Criminal Justice (Miscellaneous Temporary Modifications) (Scotland) Regulations 2020 - will amend section 16 of the Criminal Justice (Scotland) Act 2003 and section 27A of the Victims and Witnesses (Scotland) Act 2014 for the period during which the Coronavirus (Scotland) Act 2020 is in force. This will ensure that individuals who have registered with the VNS will be notified of any early releases under this process of a prisoner in respect of whom they have recorded their interest.
- Where an individual otherwise selected for early release is diagnosed with Covid-19, their release may be delayed on the advice of a healthcare professional until their condition improves.

The Scope of the EQIA

An EQIA was completed during the passage of the Coronavirus (Scotland) Act 2020 which considered the potential impact on each of the protected characteristics was considered. The Scottish Government found no evidence to suggest that any of these groups would be disproportionately adversely affected by the Act. This additional EQIA has been completed to accompany the Regulations to make a further assessment of impact.

Any potential impact will be limited in scale due to the restriction on the number of individuals that will be considered for release.

In considering the extent of impact it is relevant that all the individuals being considered would have been released within the next three months at the scheduled completion of the custodial section of their sentence.

Key Findings

The demographic of the expected cohort of individuals eligible for early release is deemed likely to be proportionate to the current make-up of the short sentence prison population (and as such, may reflect any comparative imbalances already identified in the prison population compared to the general population – for example the overall prison population is predominantly male).

The process is applicable across all prisons where eligible prisoners are held, and there is no particular provision to release prisoners from specific prisons or locations, which removes the potential for any differential effects which that may have produced.

The eligibility criteria and release process set out in the regulations is blind to the protected characteristics of age, gender reassignment, marriage/civil partnership, race religion or belief and sexual orientation. As such it is not anticipated there is likely to be a disproportionate impact of emergency release on people with these characteristics.

Establishing the core eligibility on sentence length and time left to serve is intended to deliver a fair and equitable process to identify the individuals to be released; whilst excluding individuals whose previous offending suggests a greater risk to the general population. In any case, all individuals who are eligible to be released will be within 3 months of their scheduled release date, and as such, any material impact of their release is likely to be similar to their being released as planned, and only being brought forward by a matter of weeks.

The eligibility criteria do not themselves make special allowance for individuals whose personal circumstances may possibly place them at a specific risk if they were to be released through this process. However, preventing eligibility for early release from prison on those grounds may not have been an appropriate response to any such vulnerability. Rather, release planning can help ensure appropriate community arrangements can be put in place for any specific vulnerabilities or needs (through pre-release activity within prison, and through planning by local authorities and partner organisations, informed by the regular reports of all prisoners due to be released in the next 12 weeks which are provided by the Scottish Prison Service).

The process does not make special allowance to include individuals who would not qualify under the standard criteria, but whose age, ill-health or other personal circumstance might otherwise present a particular concern at the present time. Applying a broader case-by-case decision process would be complex, and difficult to achieve in a consistent, equitable and timeous manner. However, there is an existing process for compassionate release which is

available to consider applications from individuals whose circumstances (eg pregnancy or severe ill health) raise specific concern. Furthermore the underpinning operational practices for this process allows Governors to consider information about factors that may relate to vulnerability, such as details of any interaction with the SPS suicide prevention strategy, which can be considered as part of the assessment of risk of harm.

For those released, any potential impact on the individual will be mitigated by reasonable actions being taken to engage them with mainstream public services in the community – whether to obtain basic public services (housing, healthcare, benefits), or to address any additional needs relating to coronavirus (such as assistance to maintain self-isolation, or “shielding” arrangements). While the time to prepare for release will be constrained compared to usual processes, arrangements are being made to expedite the pre-release consideration of prisoners' circumstances, and the sharing of information with community based services. Additional information is being provided to all prisoners scheduled for release in the present time, to advise where and how they can access support services. Dedicated liaison arrangements have been set up between prisons and local authorities to expedite the release process. DWP have established a dedicated phone helpline to assist released prisoners to claim their benefit entitlement. Third sector throughcare services are adjusting their operations accordingly. These processes reflect the basic release planning and support services that would usually be available to prisoners of this type upon release, with some adjustment to expedite activities.

Regarding the possible effects on the wider community, the Act and proposed regulations take specific action to exclude groups of prisoners whose offending history would suggest a heightened risk to the public.

Furthermore, under the Act, Prison Governors will be able to take decisions to veto the release of an individual under this process, where to do so will present an immediate risk to an identified individual.

Where an individual otherwise selected for early release is assessed as being likely to have Covid-19, their early release may be delayed on the advice of a healthcare professional until such time as their condition improves.

Where an individual is released to a family home or other shared household, there may be a disproportionate impact on female partners, family members or other in the community. As previously noted, this potential negative effect will be mitigated by the regulation excluding individuals sentenced to domestic abuse or subject to a non-harassment order from the early release process.

Conversely, the release of other individuals under this process may provide a benefit to other households, in terms of capacity for assistance with childcare and caring responsibilities within the household, which can often fall disproportionately on women, sibling children or older relatives.

Recommendations and Conclusion

Overall, we anticipate that the regulations will have no differential impact in respect of those prisoners with the listed protected characteristics. The overall impact of release is deemed likely to be proportionate to the current short-sentence prisoner population.

Where there is a potential impact upon the individual, efforts are being made to address their needs as far as possible within associated procedures for release.

Any potential secondary effect on individual households or the wider community is being strongly mitigated by the exclusion of those individuals offending history would suggest a heightened risk to the public (either through the terms of the Act, the regulations, or the veto of specific individuals by Prison Governors)

The Scottish Government has considered whether the provisions could constitute conduct prohibited by the Equality Act. The provisions will apply to all prisoners satisfying the eligibility criteria irrespective of protected characteristic and will therefore not constitute direct discrimination on that basis.

The Scottish Government has also considered whether the provisions could constitute indirect discrimination. It is not anticipated that the provisions could give rise to more significant impacts on certain protected groups. Where any possible impact may arise, the Scottish Government considers the impacts are justified and a proportionate means of achieving the legitimate aim of increasing the capacity of the Scottish Prison Service and mitigating the possible spread of infection.